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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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IN THE UNITED STATES DISTRICT COURT
IN AND FOR DISTRICT OF UTAH

CHRIS HOGAN,

Plaintiff,

vs.

UTAH TELECOMMUNICATION OPEN
INFRASTRUCTURE AGENCY, AKA
UTOPIA,

AND

TODD MARRIOTT, EXECUTIVE
DIRECTOR OF UTAH
TELECOMMUNICATION OPEN
INFRASTRUCTURE AGENCY

AND

DOES 1-5

Defendants.

**COMPLAINT FOR THE VIOLATION OF
THE FIRST AMENDMENT OF THE UNITED
STATES CONSTITUTION, THE VIOLATION
OF THE UTAH PROTECTION OF PUBLIC
EMPLOYEES ACT, THE BREACH OF
CONTRACT, THE BREACH OF THE
COVENANT OF GOOD FAITH AND FAIR
DEALING, WRONGFUL DISCHARGE IN
VIOLATION OF PUBLIC POLICY, AND
PROMISSORY ESTOPPEL**

Case: 1:11cv00064

Assigned To : Stewart, Ted

Assign. Date : 4/25/2011

Description: Hogan v. Utah

Telecommunication Open

Infrastructure Agency et al

Jury Trial Requested

Plaintiff alleges as cause of action against defendants as follows:

GENERAL ALLEGATIONS

1. Christopher Hogan ("Hogan") is domiciled in the State of Colorado but has worked Monday through Friday in the State of Utah each week since May 9, 2008.
2. That Utah Telecommunication Open Infrastructure Agency ("UTOPIA") is an inter-local cooperative entity and political subdivision of the State of Utah composed of sixteen Utah cities.
3. Todd Marriott ("Marriott") currently serves as UTOPIA's executive director and is domiciled in the State of Utah.
4. There may be other individuals who in their official capacity with UTOPIA or in their individual capacity, who are liable under this Complaint.
5. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367(a).
6. Venue is proper in the United States District Court of the District of Utah.
7. UTOPIA is a group of sixteen Utah cities that joined together to form a fiber-optic network. The network brings fiber-to-the-premise technology to the cities. UTOPIA's sixteen member cities are Brigham City, Cedar City, Cedar Hills, Centerville, Layton, Lindon, Midvale, Murray, Orem, Payson, Perry, Riverton, Tremonton, Vineyard, Washington, and West Valley City.
8. UTOPIA receives its funding primarily through taxpayer-funded bonds.

9. UTOPIA must comply with the same Request for Proposal (RFP) procedures that Utah governmental agencies must comply with when awarding contracts.
10. UTOPIA is subject to Utah's Governmental Records Access Management Act ("GRAMA").
11. On or about May 9, 2009, Hogan entered into a contract with UTOPIA to provide it services as an independent contractor until May, 2011. Under the contract, Hogan was to receive compensation at the rate of \$11,500 per month for the services he provided. "Services" were defined under the contract as "sales, marketing, business development, operations, IT, and engineering efforts regarding the UTOPIA network."
12. In the contract, Hogan and UTOPIA agreed that any dispute arising from or related to the contract would be brought in Third Judicial District Court of Utah, Salt Lake County, if in state court, or the United States District Court of Utah, if in federal court. The contract also contained a confidentiality agreement related to the services Hogan performed for UTOPIA.
13. Hogan provided services to UTOPIA as an independent contractor until March, 2011.
14. Hogan's work substantially benefitted UTOPIA. In fact, Marriott praised Hogan as the person who pulled UTOPIA through many of its challenges, who saved a major UTOPIA project in Brigham City, and who has given UTOPIA the credibility necessary to secure additional bonds.
15. Early in 2011, UTOPIA made Hogan the director of operations in addition to the responsibilities he already had.

16. Although UTOPIA had not expressly agreed to renew the contract in May, 2011, Hogan and UTOPIA, through Marriott and David Shaw ("Shaw"), UTOPIA's general counsel, had engaged in multiple conversations that led Hogan to understand that the contract would be renewed.
17. Because of the importance of the marketing department to the overall success of UTOPIA, Hogan believed that the sudden termination of a key consultant in this project would be very disruptive to the overall mission of UTOPIA.
18. In January, 2011, Hogan discussed with Marriott and Shaw, his intent to stay on with UTOPIA through the first year of the five year phase after it received additional funding. It was expected initially that UTOPIA would receive the funding by February, 2011, but it was later determined that UTOPIA would not receive the funding until approximately May 15, 2011. Based on his discussions with Marriott and Shaw and the date that UTOPIA would receive the funding, Hogan had an expectation of continued employment as a consultant with UTOPIA at his current pay through May 15, 2012.
19. Based on information and belief, UTOPIA has been approved by the member cities to secure bond to fund the development of a municipal fiber optic infrastructure ("Municipal Fiber Project" or "MFP") for approximately \$65 Million in the following eight cities: Lindon, Brigham City, Midvale, Murray, Centerville, Layton, Orem, and West Valley City. The cities plan to sell the first municipal fiber optic infrastructure at approximately \$20 Million, which would provide funding for year one of their five year plan. If they hit performance benchmarks, they would be allowed to sell another.

20. Bidding on the MFP was initially planned to be opened for two separate phases, one for mainline construction of the network and the other for fiber drop installs. Hogan was made aware that an initial RFP was posted for respondents for either the mainline construction or fiber drop installs or both parts of the network components.
21. Tetra Tech submitted a bid to perform the fiber drop installs.
22. Tetra Tech is a company that had disfavored status with UTOPIA.
23. On information and belief, Ryan Marriott is in upper management of Tetra Tech in the Utah region. Ryan Marriott is also a brother to Marriott.
24. On information and belief, the bid submitted to perform the fiber drop installs from Tetra Tech contained cost amounts that were extremely close to the projected cost amounts developed by UTOPIA.
25. After initial bids were submitted the bidding process was terminated by UTOPIA.
26. UTOPIA then began to prepare a request for new bids to be submitted with the preference of one general contractor to oversee the entire project, rather than to have two phases.
27. On information and belief, UTOPIA has not yet posted this RFP nor awarded the contract for its Municipal Fiber Project.
28. Based on information and belief, Corning, Inc. was planning to submit a bid as a general contractor. Corning has discussed using Tetra Tech a subcontractor under which Tetra Tech would install the curb to home portion of the network.

29. In order to make sure the bidding process did not jeopardize the success of UTOPIA and in hopes of making the process transparent, Hogan suggested to Jarrod Pantier, UTOPIA's Outside Plant Manager ("Pantier") that he ensure that the Executive Board knew about the relationship between Tetra Tech and Marriott as well as the possibility that Corning may be having discussions with Tetra Tech about awarding the curb to home subcontract to Tetra Tech.
30. Hogan's motive in speaking with Pantier about the potential conflict of interest was to protect UTOPIA and to prevent UTOPIA from entering into a contract that could be illegal and would endanger UTOPIA's continual success and existence.
31. On information and belief, Pantier disclosed to Marriott the advice Hogan gave to him.
32. Soon after Pantier disclosed Hogan's advice to Marriott, Marriott terminated the contract between Hogan and UTOPIA and requested that Hogan sign a termination agreement.
33. Hogan would not sign the termination agreement.
34. When Hogan would not sign a termination agreement, Marriott began sending texts to Hogan's wife's cell phone to warn Hogan to keep quiet about UTOPIA's dealings.
35. On or about March 18, 2011, UTOPIA employees attempted to evict Hogan from the apartment where he lived during the work week. The UTOPIA employees spoke with Hogan's landlord and were combative and belligerent.
36. Hogan had to assume the lease to ensure that he could remain in the apartment.
37. On or about March 18, 2011, Marriott locked Hogan out of the office he used while providing services to UTOPIA.

38. On information and belief, after Hogan refused to sign the termination agreement with UTOPIA, a member of Marriott's executive staff told UTOPIA employees that Hogan had been committing crimes.
39. On information and belief, after Marriott terminated Hogan, Marriott hired his neighbor and a previous business partner of his brother, Ryan Marriott, to fill Hogan's position.
40. In addition to Hogan's relationship with Marriott and Shaw in UTOPIA, Hogan, Marriott, and Shaw had formed a non-profit corporation doing business as "GigNation."
41. Hogan currently serves as GigNation's executive director.
42. On information and belief, after Marriott and Shaw terminated UTOPIA's contract with Hogan, they started making plans to oust Hogan from GigNation.
43. Marriott and Shaw blocked Hogan from accessing GigNation's website by changing its passwords.
44. Hogan sent Shaw multiple emails requesting access to the website.
45. Shaw did not respond to Hogan. Instead, he said that because of the situation with UTOPIA, he could not ethically respond to Hogan's emails.
46. Soon thereafter, Shaw sent Hogan's attorney a notice of a special meeting with the purpose of replacing Hogan as GigNation's executive director.
47. On information and belief, either Shaw or Marriott told representatives of Aerojet, a business considering involvement with GigNation, that Shaw and Marriott had "severed ties" with Hogan.

48. Hogan sought legal advice, and in an attempt to get the attention of UTOPIA's executive board, Hogan directed attorneys at Christensen Thornton PLLC to draft a mock complaint and to serve it on the executive board during its weekly meeting.
49. Hogan hoped that the mock complaint would be sufficient to get the attention of the members of the executive board that he had been wrongfully terminated. The mock complaint failed to produce the intended result.
50. On March 24, 2011, Marriott sent Hogan a letter. In the first paragraph, Marriott said, "As we discussed last Thursday, March 17, 2011, your actions specific to recent interactions with Mr. Jarrod Pantier are clearly outside the scope of that certain Professional Services Agreement, together with applicable Statements of Work, dated as of May 12, 2009 ("Services Agreement")."
51. Because the mock complaint did not get any results, Hogan sent UTOPIA a demand letter on March 24, 2011. In the letter, Hogan outlined his demands and his concerns about the future of UTOPIA under Marriott's directions.
52. The demand letter outlined four concerns about Marriott's leadership. First, Hogan outlined Marriott's attempts to employ Marriott's neighbor and friend in position with UTOPIA. Second, Hogan outlined how UTOPIA's possible contract with Tetra Tech could destroy UTOPIA's public image and eventually destroy UTOPIA itself. Third, Hogan illustrated how Marriott had lost the vision of UTOPIA. Fourth, Hogan outlined how Marriott had fostered a hostile work environment in which fear, dishonesty, backbiting, selfishness, sexual innuendo, and other inappropriate conversations are

cultivated without repercussion. Hogan cited one specific instance in which Marriott's cavalier response further victimized the involved woman.

53. On April 4, 2011, Shaw responded to Hogan's demand letter. Shaw accused Hogan of blackmail and extortion. He also demanded that Hogan keep quiet about UTOPIA's dealings with him. He also blamed Hogan for Marriott's failure to do anything related to the specific instance of sexual harassment cited to in Hogan's demand letter.

54. In response to Shaw's letter, Hogan sent UTOPIA another letter. In the letter, Hogan outlined his objectives and thought processes that lead him to act as he had. He assured that he did not want anything that he was not legally entitled to receive. And he offered to enter into negotiations or formal mediation with the goal of reaching a mutually acceptable resolution. Additionally, relating to the instance of sexual harassment, Hogan reminded Shaw that he had not suggested that Marriott do nothing and outlined the course of action that he recommended that Marriott take. He also reminded Shaw that Marriott ignored his recommendations.

55. In response to Hogan's attempt to clarify his position and to open the door to negotiations, UTOPIA filed a lawsuit in which it is seeking an injunction and declaratory judgment against Hogan. The injunction is to prohibit Hogan from "disclosing any information obtained during the course of rendering services under the Agreement."

56. The information UTOPIA seeks to prevent Hogan from disclosing is Hogan's "perception of deficiencies in the leadership of UTOPIA's executive director."

57. UTOPIA alleged that "Hogan has threatened to violate the confidentiality requirements of the Agreement if he is not granted certain concessions and payments to which he would not otherwise be entitled under the terms of the Agreement."

58. Hogan has never threatened to disclose information to a third party. Instead, he has said that if UTOPIA is not willing remedy his wrongful termination by meeting his demands or negotiating a mutually acceptable resolution then he will have no other choice but to file a lawsuit.

FIRST CAUSE OF ACTION

(Violation of Right of Free Speech under the First and Fourteenth Amendment of the United States Constitution and 42 U.S.C. 1983)

59. Hogan realleges paragraphs 1 through 58 as though set forth in full hereat.

60. The First Amendment of the United States Constitution made applicable to the States through the Fourteenth Amendment of the United States Constitution protects an individual's right to the freedom of speech.

61. UTOPIA is a political subdivision of the State of Utah.

62. UTOPIA's actions constitute state action under the Fourteenth Amendment of the United States Constitution, and therefore, are conducted under the color of state law under 42 U.S.C. § 1983.

63. A government entity cannot terminate a contract with an independent contractor because the independent contractor spoke publicly or privately about a matter of public concern.

64. A government entity cannot refuse to renew a contract with an independent contractor because the independent contractor spoke publicly or privately about a matter of public concern.
65. After he learned from Pantier that Hogan had expressed his concern that Tetra Tech's proposed involvement with UTOPIA presented a potential conflict of interest that jeopardized UTOPIA's future success and existence, Marriott requested a meeting with Hogan.
66. On March 16 2011, prior to the meeting, Marriott texted Hogan requesting that Hogan bring the company computer in Hogan's possession to the meeting.
67. On or about March 17, 2011, Marriott, Shaw, Hogan and Kirt Sudweeks, UTOPIA's Chief Financial Officer, held the requested meeting. Pantier also attended a portion of the meeting.
68. Marriott informed Hogan that speaking with Pantier about Tetra Tech's involvement was outside the scope of his employment agreement with UTOPIA.
69. As further memorialized in a letter from Marriott to Hogan on March 24, 2011, Marriott unilaterally terminated the contract between Hogan and UTOPIA because Hogan spoke to Pantier about his concerns that Tetra Tech's proposed involvement with UTOPIA presented a potential conflict of interest that jeopardized UTOPIA's future success and existence.
70. Marriott accused Hogan of "insubordination," even though Hogan was an independent contractor and not an employee of UTOPIA.

71. Shaw agreed with terminating the contract between UTOPIA and Hogan.
72. Hogan's private speech about a matter of public concern was a substantial or motivating factor for UTOPIA's decision to terminate the contract between UTOPIA and Hogan.
73. Hogan's private speech about matters of public concern was a substantial or motivating factor for UTOPIA's decision to terminate its contract and not to renew its contract with him for an additional year.
74. As of March 17, 2011, two months remained under the contract and but for UTOPIA's termination of the contract, Hogan would have received eleven-thousand-five-hundred dollars (\$11,500) each month for the remaining months under the contract.
75. Had UTOPIA renewed the contract with Hogan, Hogan would have received eleven-thousand-five-hundred dollars (\$11,500) each month for twelve months.
76. In total, Hogan claims that UTOPIA has caused him damages of \$23,000 for terminating the contract and damages of \$138,000 for refusing to renew the contract with him for an additional year.
77. On information and belief, UTOPIA's actions through Marriott and Shaw were motivated by evil motive or intent or involved reckless or callous indifference to the federally protected rights of Hogan.
78. Hogan is entitled to punitive damages for the intentional, reckless or callous disregard of his rights by UTOPIA.
79. Additionally, Hogan has retained an attorney, has accrued legal fees, and will continue to accrue legal fees to vindicate his right to free speech in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(Violation of Utah Code Ann. § 67-21-3 (2010) for Taking Adverse Action against Hogan because Hogan Communicated in Good Faith the Existence of Any Waste of Public Funds, Property, or Manpower, or a Violation or Suspected Violation of a Law, Rule, or Regulation Adopted under the Law of Utah, a Political Subdivision of Utah, or Any Recognized Entity of the United States.)

80. Hogan realleges paragraphs 1 through 79 as though set forth in full hereat.

81. Utah law prohibits government employers from taking adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the law of this state, a political subdivision of this state, or any recognized entity of the United States.

82. Adverse action means to discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges.

83. Utah law prohibits government entities and government officials from engaging in nepotism.

84. Utah law also prohibits bid rigging.

85. Hogan communicated with Pantier in good faith about his concern that the potential contract involving Tetra Tech could involve a conflict of interest, nepotism, and bid rigging.

86. Hogan suffered an adverse action for communicating in good faith with Pantier about his concern when UTOPIA, through Marriott and Shaw, terminated its contract with him.

87. Hogan suffered damages in the amount of \$161,000; \$23,000 for the two months remaining on the contract and \$138,000 for the additional year that he would have worked for UTOPIA had it not terminated him for communicating in good faith with Pantier about the potential contract involving Tetra Tech.
88. Additionally, Hogan has retained an attorney, has accrued legal fees, and will continue to accrue legal fees because he was terminated for communicating in good faith with Pantier about the potential conflict of interest, nepotism, and bid rigging.

THIRD CAUSE OF ACTION
(Breach of Contract)

89. Hogan realleges paragraphs 1 through 88 as though set forth in full hereat.
90. On or about May 9, 2008, a representative UTOPIA offered to enter into a contract with Hogan.
91. UTOPIA offered to pay Hogan \$11,500 per month in exchange for Hogan's services as a Consultant to be responsible for all sales, marketing, business development, operations, IT, and engineering efforts regarding the UTOPIA network.
92. Under the offer, Hogan would work as an independent contractor and not as an employee of UTOPIA.
93. Hogan would work as an independent contractor for UTOPIA for the period of twenty-four (24) months.
94. Hogan accepted UTOPIA's offer.
95. Hogan and UTOPIA memorialized their agreement in a written contract.
96. The written contract was based upon valuable consideration.

97. On or about May 9, 2008, the written contract (the contract) was signed by Hogan, Marriott, Shaw, and Kirt Sudweeks, representatives of UTOPIA.
98. The contract did not contain a provision that defined when either party could terminate the contract before the expiration of the twenty-four (24) months.
99. On or about March 17, 2011, Marriott unilaterally terminated the contract between Hogan and UTOPIA.
100. Marriott accused Hogan of "insubordination," even though Hogan was an independent contractor and not an employee of UTOPIA.
101. Hogan had performed all of his obligations as an independent contractor under the contract up to the point it was terminated.
102. UTOPIA's unilateral termination of the contract was without cause.
103. As of March 17, 2011, two months remained under the contract.
104. But for UTOPIA's breach of the contract, Hogan would have received eleven-thousand-five-hundred dollars (\$11,500) each month for the remaining months under the contract.
105. In total, Hogan claims that the company has caused him damages of \$23,000 for breaching the contract.

FOURTH CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)

106. Hogan realleges paragraphs 1 through 105 as though set forth in full hereat.
107. Every contract has an implied covenant of good faith and fair dealing.

108. UTOPIA breached the covenant of good faith and fair dealing when it terminated the contract between it and Hogan and through its actions subsequent to terminating the contract.

109. Immediately prior to the termination of the contract, Marriott praised Hogan. He had previously credited Hogan as the person who pulled UTOPIA through its challenges, who saved a major UTOPIA project in Brigham City, and who has given UTOPIA the credibility necessary to secure additional bonds.

110. But Marriott's attitude toward Hogan recently began to change.

111. Marriott began pressuring Hogan to persuade Hogan to hire one of Marriott's neighbors, Gary Jones ("Jones") for "any" position in the marketing department.

112. Hogan advised Marriott that Jones was not a good fit for any positions currently open.

113. Before telling Marriott that he would not hire Jones, Hogan had made an offer, with Marriott's approval, to another individual for the position of Public Policy Marriott which is part of the marketing department.

114. Prior to the new Public Policy Marriott starting in the role, Marriott told Hogan he did not remember giving permission to make the offer despite an email thread showing otherwise.

115. Marriott said Gary Jones would be a much better fit for that position despite having no experience or education in government or public policy. After Hogan's

... assertion that there were no positions that fit this person's background, Hogan was instructed to create a position for Jones.

116. Marriott and Hogan engaged in a heated debate in which Hogan vehemently objected to granting unfair advantage to a friend of Marriott and the unprofessional nature of retracting the offer to the original candidate.

117. Marriott acquiesced to Hogan's objections.

118. On information and belief, after he unilaterally terminated the contract between Hogan and UTOPIA, Marriott immediately hired Jones to replace Hogan in the role of Marketing Director. Additionally, Marriott also hired Brett Iverson to help fill the void created by terminating Hogan. Brett Iverson is believed to have been a business partner with Ryan Marriott.

119. On information and belief, as a result of the termination of Hogan's consulting agreement, Marriott locked Hogan out of his office computer and his company cellular phone and announced his termination to all employees at UTOPIA.

120. Marriott sent a text on March 18, 2011 to Hogan on Hogan's wife's cell phone that stated as follows: "Chris, FYI—under article 4, the services you have performed are confidential and you have agreed to maintain the confidentiality [sic] of the same. Discussion of your internal knowledge of Utopia as result of the Services you have performed with any person or entity is in violation of article 4. You are directed to cease and desist all such activities".

121. On information and belief, Marriott locked down company offices over the weekend following the termination of Hogan.

122. On information and belief, on March 17, 2011, Gloria Cortes, an employee of UTOPIA, contacted Jan Webb ("Jan"), landlord of the American Towers apartment which UTOPIA leases for Hogan and indicated that UTOPIA would pay through the current lease term and that Hogan can remain in the apartment until the end of the current month when the lease would be terminated.

123. On March 18, 2011, Cortes called Jan a second time and asked Jan to get the access card and keys from Hogan and have him vacate the Condo immediately and to remove his personal belongings. Cortes indicated the lease would be terminated as of March 18 and requested written notification of the termination. Jan sent an email to Cortes with the written confirmation of the termination.

124. Within hours of the second telephone call, Hogan spoke with LaVarr Webb (LaVarr), Jan's husband. Hogan indicated that since UTOPIA terminated the lease, Hogan would pick up the cost of the unpaid balance personally.

125. Cortes then called Jan Friday evening thanking her for the email of the termination of the lease and for refunding the balance of the lease for the remainder of the lease term. Cortes then asked to be allowed to enter the condo in order to take pictures and prove there was no liability and to prove that Hogan's belongings were gone.

126. LaVarr then got on the call and indicated that He and Jan owned the condo and since UTOPIA has already terminated the lease he can do anything he wants with his property.

127. A woman—believed to be Peggy Hathaway based on the name on the caller ID display and also believed to be an attorney—then began to speak and immediately became belligerent with the Webbs, said that Chris cannot stay in the condo, and that this was a corporate lease. LaVarr replied by saying that the corporate lease had already been terminated. LaVarr then asked who she was, and she said, “You don’t need to know my name.”

128. The unidentified woman then informed LaVarr that the phone conversation was being recorded. LaVarr objected to being recorded without his permission and questioned if that was legal. The woman stated it was legal and she could record the call and at that point stated abruptly to LaVarr that she was through with this call and hung up the phone.

129. UTOPIA’ actions caused damages to Hogan in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
(Wrongful Discharge in Violation of Public Policy)

130. Hogan realleges paragraphs 1 through 129 as though set forth in full hereat.

131. The State of Utah has established a clear and substantial public policy to prevent government employers from retaliating against their employees for communicating their

concerns that the government employer may be engaging in or is about to engage in illegal activities.

132. The State of Utah has also established a clear and substantial public policy requiring parties to contracts to perform the terms of these contracts in good faith and with fair dealing.

133. Plaintiff acquired a significant legal right when he contracted with UTOPIA to provide his professional services as an independent contractor.

134. UTOPIA terminated the contract citing insubordination.

135. On information and belief, UTOPIA's alleged reason for terminating Hogan is pretext. As an independent contractor, Hogan was not capable of insubordination. Instead, UTOPIA, through Marriott, terminated its contract with Hogan because he raised questions about whether the proposed involvement of Tetra Tech, a company employing Marriott's brother in its upper management, was in the best interests of UTOPIA or even legal.

136. UTOPIA violated the clear public policy of the State of Utah by terminating the contract.

137. Hogan has undertaken all necessary action to mitigate his damages, including seeking alternate employment.

138. UTOPIA's actions caused damages to Hogan in an amount to be proven at trial.

139. On information or belief, UTOPIA's conduct was willful and malicious, or its conduct manifests a knowing and reckless indifference toward, and a disregard of, the rights of Hogan.

140. Hogan is entitled to an award of punitive damages for the willful, malicious, knowing or reckless disregard of his rights by UTOPIA.

SIXTH CAUSE OF ACTION
(Promissory Estoppel)

141. Hogan realleges paragraphs 1 through 140 as though set forth in full hereat.

142. Hogan's first contract with UTOPIA began in 2008 starting in May of 2008, going to September 2008. It was extended to May, 2009. Then they entered into the current contract from May 2009 through May 15, 2011.

143. Although UTOPIA had not expressly agreed to renew the contract in May, 2011, Hogan and UTOPIA, through Marriott and Shaw, had engaged in multiple conversations that led Hogan to understand that the contract would be renewed.

144. Because of the importance of the marketing department to the overall success of UTOPIA, Hogan believed that the sudden termination of a key consultant in this project would be very disruptive to the overall mission of UTOPIA.

145. In January, 2011, Hogan discussed with Marriott and Shaw, his intent to stay on with UTOPIA through the first year of the five year phase after it received additional funding. It was expected initially that UTOPIA would receive the funding by February, 2011, but it was later determined that UTOPIA would not receive the funding until

approximately May 15, 2011. Based on his discussions with Marriott and Shaw and the date that UTOPIA would receive the funding, Hogan had an expectation of continued employment as a consultant with UTOPIA at his current pay through May 15, 2012.

146. This discussion of a succession plan was raised by Hogan because he wished to make the transition from him to his successor as smooth as possible so that the Executive Board would be comfortable with the new team that would complete UTOPIA's mission.

147. When the idea of a succession plan was presented to Marriott, Marriott orally approved the idea in concept. Shaw was aware of the succession plan and did not object to it. Until March 17, 2011, there was no indication that Hogan's contract would not be renewed. There was no indication that contradicted the need for a succession plan.

148. One hundred thirty eight thousand dollars (\$138,000) would be the value of the anticipated wages for the subsequent 12 months—established based on Hogan's intent of remaining with UTOPIA through the first full year of the current five year plan.

149. The conversations between UTOPIA and Hogan constituted an implied promise that the contract would be renewed for an additional year.

150. In reasonable reliance on UTOPIA's representations, Hogan was not seeking to provide his professional services or to be employed elsewhere for the year following the termination of the contract. In fact, even though he had received several unsolicited job offers which included lucrative compensation packages, Hogan did not accept the offers because he anticipated being employed by UTOPIA.

151. Hogan's reliance was reasonable because he had been providing services as an independent contractor for UTOPIA for approximately three years and had multiple conversations about his succession plan.

152. UTOPIA knew or should have known that by discussing with Hogan about how he would terminate his services and train his successor within one year that Hogan would rely on the implied promise of renewing the contract for one year.

153. UTOPIA was aware that Hogan relied upon their promises and withheld actively searching for alternate employment because Hogan continued to provide his professional services under the contract.

154. UTOPIA was aware of all material facts of or relating to the contract between the parties at the time Hogan continued providing his professional services to UTOPIA.

155. Hogan was damaged by relying upon UTOPIA's promises because he withheld from seeking and accepting alternate employment and instead continued providing professional services to UTOPIA.

156. As a result of UTOPIA's actions, Plaintiff was damaged in the amount of \$138,000.

WHEREFORE, Hogan prays

1. That judgment be rendered against UTOPIA for the principal amount of \$161,000 on the first cause of action;
2. That judgment for punitive damages be rendered against UTOPIA on the first cause of action in an amount to be determined at the time of trial;

3. That judgment be rendered against UTOPIA for the principal amount of \$161,000 on the second cause of action;
4. That judgment be rendered against UTOPIA for the principal amount of \$23,000 on the third cause of action;
5. That judgment be rendered against UTOPIA in an amount to be proven at the time of trial on the fourth and fifth causes of action;
6. That judgment for punitive damages be rendered against UTOPIA on the fifth cause of action in an amount to be determined at the time of trial;
7. That judgment be rendered against UTOPIA for the principal amount of \$138,000.00 on the sixth cause of action;
8. That judgment be rendered against UTOPIA for the interest due and continuing to accrue at the rate of 10% per annum, from March 17, 2011, in an amount to be proven at time of trial;
9. For attorney's fees in an amount to be proven at the time of trial;
10. For costs of Court.

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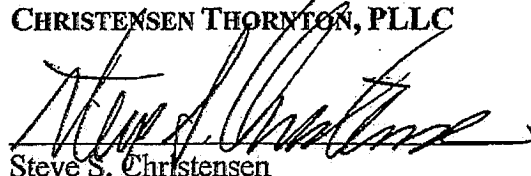
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DEMAND FOR JURY TRIAL

Furthermore, Plaintiff hereby enters his demand for a trial by jury on the foregoing causes of action.

DATED this 22nd day of April, 2011.

CHRISTENSEN THORNTON, PLLC



Steve S. Christensen

Craig L. Pankratz

Attorneys for Plaintiff

Serve Defendants at:

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West Valley City, UT 84119-1319